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IN THE

Supreme Court of the United States

October Term, 1957

No. 345

SWORD LINE, INC.,
Plaintiff-Petitioner,

v.

UNITED STATES OF AMERICA,
Defendant.

REPLY BRIEF FOR PLAINTIFF-PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR PLAINTIFF-PETITIONER

Argument

1. The Petitioner has not had its day in Court. Res judicata cannot be urged.

In its concluding paragraph, the brief for the Government in opposition to the petition for a writ of certiorari says:

> "Petitioner has had its day in court on the question of jurisdiction over the subject matter of its claim, and the Court of Claims properly dismissed

the complaint on the authority of the final decision rendered by this Court on petitioner's previous petition for certiorari."

In the Court of Claims the basis for the Government's motion to dismiss the complaint was the Supreme Court's decision on the petitioner's previous petition in *Sword Line, Inc.* v. *United States*, 351 U. S. 976 (Government's Brief in Opposition, p. 4).

But this Court's decision in *Sword Line, Inc.* v. *United States*, 351 U. S. 976, granted the petition for certiorari on the question of jurisdiction and simultaneously closed the door to argument on that question. The petitioner was foreclosed from a hearing on the very question of jurisdiction on which, among others, it sought certiorari; and accordingly, the petitioner has not had its day in Court on the question of jurisdiction over the subject matter, any statement by the opposition to the contrary notwithstanding.

In support of its statement to the contrary the Government cites the case of *Stoll* v. *Gottlieb*, 305 U. S. 165, which authority at page 172 says:

> "Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. *After a party has had his day in court, with opportunity to present his evidence and his view of the law*, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first." (Emphasis supplied.)

When certiorari was granted on the question of jurisdiction but argument thereon was foreclosed, *the petitioner had no opportunity to present its view of the law on that question.* There was missing the essential elementary prerequisite, as laid down by *Stoll* v. *Gottlieb, supra,* and consequently it cannot be said that the petitioner has had its day in court.

Of course it is important that there should be a place to end litigation, but as was said in *Stoll* v. *Gottlieb, supra,* that place cannot be reached until "*after a party has had his day in court with opportunity to present his evidence and his view of the law.*" Until such opportunity has been afforded, the litigation has not properly ended, and the earlier decision as to jurisdiction is open to collateral attack. On such collateral attack it will not be a retrial of the issue, because the issue was not tried in the first place. In *Sword Line, Inc.* v. *United States,* 351 U. S. 976, the issue of jurisdiction was not tried because the petitioner had no opportunity to present its evidence or its view of the law. The decision is not *res judicata.*

2. Where a strict jurisdictional fact is absent, admiralty cannot take jurisdiction. To do otherwise, is usurpation of jurisdiction.

In its brief in opposition the Government states erroneously that in *Krauss Bros. Lumber Co.* v. *Dimon S.S. Corp.,* 290 U. S. 117, this court held that a claim to recover excess freight charges is enforceable in admiralty. Such was not the holding. What this Court held in the *Krauss* case was that where freight charges exceed the stipulated amount agreed upon in the maritime contract they constitute a *breach* of the maritime contract, which is the strict jurisdictional fact which gives admiralty the jurisdiction.

What the Government ignores is the statement in this Court's decision in the *Krauss* case, written by Mr. Justice Stone, in which he says at page 124:

> "Even under the common law form of action for money had and received there could be no recovery without proof of the breach of contract involved in demanding the payment, and the basis there, as in admiralty, is the violation of some term of the contract of affreightment."

The strict jurisdictional prerequisite fact for admiralty jurisdiction is the breach of the maritime contract. Where there is no breach there is no admiralty jurisdiction and none can be usurped. In *Sword Line, Inc.* v. *United States*, 351 U. S. 976, there was no breach of the maritime contract, and consequently the final adjudication giving admiralty the jurisdiction is void because the strict jurisdictional fact is absent, and the adjudication is therefore subject to collateral attack.

Admiralty jurisdiction is not dependent on any statute. For twenty centuries it has been inherent in the law of admiralty that where there is a maritime contract, coupled with a breach thereof, admiralty has the jurisdiction; without a breach of the maritime contract the jurisdiction is elsewhere than in admiralty. Such is the clear import of the words of Mr. Justice Stone in *Krauss Bros. Lumber Co.* v. *Dimon S.S. Corp.*, *supra*. The *breach* of a maritime contract is the strict jurisdictional fact which must be present to give admiralty jurisdiction. Without such strict jurisdictional fact an adjudication in admiralty is a nullity.

In addition to the jurisdiction of admiralty resulting from a breach of a maritime contract, admiralty has also had, from time immemorial, inherent jurisdiction over certain specialties such as salvage, jettison, general average, and

in rem proceedings generally, not arising out of any contract, but such inherent jurisdiction over specialties does not alter the basic strict jurisdictional requirement of the existence of a *breach* of a maritime contract before admiralty jurisdiction can attach in maritime contract cases.

3. In the case at bar the Suits in Admiralty Act is not the jurisdictional statute.

On page 5 of its brief in opposition the Government says that the District Court had "the duty to interpret the language of the jurisdictional statute, here the Suits in Admiralty Act".

The cause in the case at bar is concerned with the *Merchant Ship Sales Act of 1946* which embraced in its terms the *Merchant Marine Act of 1936*, both of which statutes were enacted by Congress with a Declaration of Policy that the Government would deal with its citizens in the manner of a private corporation, and not any longer in the manner of a sovereign as the *Suits in Admiralty Act of 1920* required when the latter was enacted. The *Merchant Ship Sales Act of 1946*, by virtue of such Declaration of Policy, superseded the *Suits in Admiralty Act of 1920*, so much so that the latter could no longer be applied to issues and causes arising under the Declaration of Policy of 1946. Under the Congressional intent so obviously expressed in the *Merchant Ship Sales Act of 1946*, the *Suits in Admiralty Act of 1920* has become obsolete and outmoded.

Likewise the decisions of this Court, to which the Government refers on page 4 of its opposing brief, namely, *Johnson* v. *Fleet Corporation* (1930), 280 U. S. 320, and *Matson Navigation Co.* v. *United States* (1932), 284 U. S. 352, which decisions concerned themselves with ascertaining the intent of Congress, as it was expressed in 1920,

are no longer applicable in dealing with situations arising out of the completely changed intent of Congress as expressed by it in 1946 in its Declaration of Policy enacted in the *Merchant Ship Sales Act of 1946.*

The outmoded and superseded *Suits in Admiralty Act* cannot be applied to the cause of action at bar. It is not the jurisdictional statute.

4. A Null and Void adjudication cannot be a guiding precedent for future decisions.

The Government's brief in opposition at pages 3 and 4 refers to three cases which have been adjudicated since the decision of *Sword Line, Inc.* v. *United States*, 351 U. S. 976. The three cases involved the rights of steamship companies, named respectively American Eastern Corp., Smith-Johnson Corp. and Marine Transport Lines, Inc., and in each of the three decisions the null and void adjudication of *Sword Line, Inc.* v. *United States*, 351 U. S. 976, was specifically set up as a ruling case and it was followed as a controlling precedent. The entire shipping industry of the nation, comprising a thousand steamship companies, is being victimized by the Government through the unjust enrichment of the latter to the extent of over a hundred million dollars only because the steamship companies were lured into believing that Congress meant what it said in 1946, namely, that henceforth the Government would contract in the manner of a private corporation. Little did the companies expect, after entering into the contracts, that their Government would turn turtle, resume its sovereign status, exhume the discarded *Suits in Admiralty Act* and wield its outmoded overpowering bludgeon against them. A void adjudication, which permits and encourages such results, should be expunged.

Conclusion

In *Archawski* v. *Hanioti*, 350 U. S. 532, the strict jurisdictional fact, namely, a breach of the maritime contract, was present, wherefore admiralty had jurisdiction. In *Sword Line, Inc.* v. *United States*, 351 U. S. 976, the same strict jurisdictional fact was absent, and its absence makes the decision a nullity, and therefore open to collateral attack.

In *Sword Line, Inc.* v. *United States*, 351 U. S. 976, the court of last resort granted certiorari on the question of jurisdiction but simultaneously sealed the door to a hearing thereon. The opportunity to litigate was foreclosed. If that be *res judicata* then we really will have irreversible injustice by judicial fiat. Certiorari should be granted.

Dated, New York, September, 1957.

Respectfully submitted,

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